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Thursday, June 1, 2000

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UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF CALIFORNIA

In re:
Bankruptcy Case
(Chapter 11 Cases)
No. 98-3-3952
No. 98-3-3953

LYON'S RESTAURANTS, INC.,
a Delaware corporation,
Debtor.

_____/

In re:
(Jointly Administered for
Procedural Purposes Only
Under No. 98-3-3952-TC

L.R. HOLDINGS, INC.,
a Delaware corporation,

Debtor.

_____ /

MEMORANDUM RE DEBTOR'S OBJECTION TO HARDEN RANCH CLAIM

Debtor Lyon's Restaurants, Inc. (Debtor) objected to the claim filed by Harden Ranch Plaza Associates Joint Venture (Harden Ranch) on the basis that the claim was not timely filed. The parties agreed to submit the matters on the papers without oral argument. Upon due consideration, and for the reasons stated below, I determine that the objection should be overruled.

FACTS

Debtor operated a chain of restaurants. Harden Ranch owned a building in Salinas, California in which the Debtor leased space. At the time Debtor filed its chapter 11 petition, the lease had a remaining term of 13 years. Debtor sold all of its operating assets to ICH during the chapter 11 case. The purchase agreement permitted ICH to assume or reject individual restaurant leases. ICH rejected the Harden Ranch lease in December 1998. All lease payments were current at the time of the rejection. Upon rejection, Harden Ranch held an unsecured claim against Debtor for future rent, subject to a duty to mitigate damages, and subject to the limitations of 11 U.S.C. § 502(b)(6).

The court set January 18, 1999 as the deadline for filing proofs of claim. It is undisputed that Harden Ranch received notice of this deadline. Following ICH's rejection of the lease, Harden Ranch attempted to lease the premises to a restaurant called Chef Lee. These negotiations were still ongoing as of the claims bar date. Harden Ranch did not file a timely proof of claim. The negotiations with Chef Lee collapsed in May 1999, because Chef Lee was unable to obtain the financing necessary to open a new restaurant. Harden Ranch filed a proof of claim on June 17, 1999. Harden Ranch was unable to find any other tenant and sold the building in November 1999.

DISCUSSION

A. THE CLAIMS BAR DATE DOES NOT APPLY TO REJECTION CLAIMS

The only claims bar date fixed at the time Harden Ranch filed its proof of claim was the general claims bar date fixed in the Notice of Commencement of Case. That notice did not state that this deadline applied to claims arising from the rejection of executory contracts, nor did it fix a separate date for the filing of rejection claims.

Bankruptcy Rule 3003(c)(3), which governs the filing of claims in chapter 11 cases, provides:

Time for filing. The court shall fix and for cause shown may extend the time within which

proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extend and under the conditions stated in Rule 3002(c)(2), (c)(3), and (c)(4).

Bankruptcy Rule 3002(c)(4) provides "[a] claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct."

Read together, the two rules cited above provide that the court's fixing of a general claims bar date in a chapter 11 case does not by itself constitute the fixing of a bar date for rejection claims. To hold otherwise would render the second sentence of Rule 3003(c)(3) meaningless. If the court's fixing of a general bar date created a bar date for rejection claims under Rule 3002(c)(4), the exception in Rule 3003(c)(3) would never apply.

Because the court had not fixed a bar date for rejection claims, Harden Ranch's proof of claim was timely.

B. EXCUSABLE NEGLECT

This court may allow a late-filed claim in a chapter 11 case if the late filing is the result of excusable neglect. Pioneer Investment Services v. Brunswick Associates, 113 S. Ct. 1489 (1993). To the extent the claim bar date applies to Harden Ranch's rejection claim, I determine that Harden Ranch's failure to file its proof of claim by that deadline is the result of excusable neglect. In so determining, I consider the following factors.

1. Length of delay. The claim was filed five months late. This delay is neither extensive nor de minimis, and does not weigh in favor of either party.

2. Effect of delay on judicial proceedings. Harden Ranch's delay in filing its proof of claim will have little effect on ongoing judicial proceedings. This is a liquidating chapter 11 case. Confirmation of a plan was not delayed by Harden Ranch's delay in filing its proof of claim. Debtor has not asserted that this is the only remaining claim to be resolved. Finally, the Harden Ranch claim is easy to calculate and should not require any significant discovery or more than a short hearing to resolve.

3. Reason for delay. Harden Ranch did not file a timely proof of claim because it hoped it could fully mitigate its damages, and avoid having to file a claim, by leasing the premises to another tenant.⁽¹⁾ The negotiations with Chef Lee did not, of course, prevent Harden Ranch from filing a protective proof of claim, and Harden Ranch's failure to file a protective claim constituted neglect. I find that this neglect was excusable, however, because the claim was not fully ripe and could not have been liquidated as of the claims bar date. As noted above, Harden Ranch filed its proof of claim immediately after the Chef Lee negotiations fell through.

4. Prejudice. Debtor suffered no cognizable prejudice. First, Debtor's ability to establish the facts relevant to the claim was not diminished due to claimant's delay in filing its proof of claim. The claim is based on breach of a written lease. The only facts relevant to the validity

and amount of the claim are whether Harden Ranch attempted to mitigate damages, and the extent of damages it suffered despite its efforts to mitigate. Because Harden Ranch was in the process of attempting to mitigate damages when the claims bar date passed, the events governing the amount of the claim had not occurred as of the bar date. Because Harden Ranch filed its proof of claim promptly after its efforts to mitigate failed, Debtor has not been prejudiced by lost evidence or fading memories regarding the controlling facts. Second, neither Debtor nor other claimants were misled in negotiating or litigating claims as a result of Harden Ranch's delay in filing its proof of claim. Harden Ranch's claim constitutes only about two percent of the general unsecured claims filed. Debtor does not assert that its claims objection strategy regarding other creditors would have been any different had it known of the Harden Ranch claim.

5. Good faith. Harden Ranch waited only until it completed its efforts to mitigate damages, which could have eliminated the claim in its entirety, to file its proof of claim. Such conduct has all the appearances of good faith, and Debtor does not contend to the contrary.

CONCLUSION

I do not determine the validity and amount of the Harden Ranch claim at this time. I determine only that the claim should not be disallowed as untimely. The court will hold a telephone status conference on June 19, 2000 at 11:00 a.m. The parties are instructed to meet and confer to attempt to resolve the claim or narrow the issues.

Dated: _____ Thomas E. Carlson United States
Bankruptcy Judge

1. Under governing California law, Harden Ranch might not have had any damage claim, even though it would clearly have lost rents between the date ICH rejected the lease and the starting date of the new lease with Chef Lee. If the rent under the new lease with Chef Lee were higher than the rent under the rejected lease with Debtor, Debtor would have been entitled to offset the increased future rents against Harden Ranch's other damages. See H. Miller & M. Starr, Current Law of California Real Estate, Vol. 6, § 18:135 at 402 (2d ed. 1989).

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